BEFORE
THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKET NO. 2019-224-E
DOCKET NO. 2019-225-E

South Carolina Energy Freedom Act (House Bill 3659) Proceeding Related to S.C. Code Ann. Section 58-37-40 and Integrated Resource Plans for Duke Energy Carolinas, LLC	)	**PETITION FOR RECONSIDERATION OF CAROLINAS CLEAN ENERGY BUSINESS ASSOCIATION, SOUTH CAROLINA COASTAL CONSERVATION LEAGUE, SOUTHERN ALLIANCE FOR CLEAN ENERGY, SIERRA CLUB, UPSTATE FOREVER, AND NATURAL RESOURCES DEFENSE COUNCIL**
South Carolina Energy Freedom Act (House Bill 3659) Proceeding Related to S.C. Code Ann. Section 58-37-40 and Integrated Resource Plans for Duke Energy Progress, LLC	)	

I. INTRODUCTION

Pursuant to S.C. Code Ann. § 58-27-2150, S.C. Code Ann. Regs. 103-802, 103-803, 103- 825 and 103-854, and the South Carolina Rules of Civil Procedure, Intervenors Carolinas Clean Energy Business Association ("CCEBA"), South Carolina Coastal Conservation League ("CCL"), Southern Alliance for Clean Energy ("SACE"), Sierra Club, Upstate Forever, and Natural Resources Defense Council ("NRDC") (collectively, "Joint Intervenors") petition the Public Service Commission of South Carolina ("Commission") for Reconsideration of Order No. 2022-332 ("Order No. 2022-332" or "the Order"), approving, with changes, the Modified Integrated Resource Plans ("IRPs") for Duke Energy Progress, LLC ("DEP") and Duke Energy Carolinas, LLC ("DEC") (collectively, "Duke" or "the Companies").

For more than a year, the various parties to the above-captioned dockets and the Commission have worked diligently to resolve the issues surrounding the selection and

approval of Duke Energy's 2020 IRPs pursuant to the South Carolina Energy Freedom Act ("Act 62"). Parties submitted extensive testimony and participated in a lengthy hearing on Duke's proposed 2020 IRPs, resulting in the Commission issuing Order No. 2021-447 ("the Modification Order") requiring Duke to modify and refile its IRPs. Largely because of this guidance from the Commission, Duke's resulting Modified IRPs represented a step toward further consensus, with Duke and intervenors appropriately focusing their attention on certain resource portfolios, namely, those that minimized ratepayer risk by accelerating the retirement of Duke's coal resources by adopting significant amounts of renewable generation within the next several years.

Given the voluminous record in support of that direction, and the initial Order No. 2021-447 validating it, the Commission's subsequent decision in Order No. 2022-332 marks an abrupt, incongruous departure. Order No. 2022-332 orders Duke to follow a resource plan that supports operating Duke's coal fleet much longer than proposed by Duke itself and slows adoption of renewables, the very resources required to reduce ratepayer exposure to rising fossil fuel prices and environmental regulatory risk. On the record painstakingly created in this case, Order No. 2022-332's adoption of a coal-heavy plan is unreasonable, imprudent, and contrary to the requirements of Act 62.

Joint Intervenors respectfully request reconsideration of the Order because it arbitrarily and capriciously "specifically mandates" that Duke "use Portfolio A2 as the selected base plan for the Companies' respective Modified IRPs" despite the lack of any rationale or record support for that determination. Further, the Order fails to meet the requirements of S.C. Code Ann. §58-37-40(C)(2), which directs the Commission to approve a utility's IRP only if it finds that "the proposed integrated resource plan represents

the most reasonable and prudent means of meeting the electrical utility's energy and capacity needs as of the time the plan is reviewed." (emphasis added). The Order makes no such finding about Portfolio A2. Nor, Intervenors submit, could such a finding be made on the evidence of record.

II. BACKGROUND

A. Standard of Review

Pursuant to S.C. Code Ann. § 58-27-2150, a party may apply to the Commission for a rehearing in respect to any matter determined in the proceeding. S.C. Code Ann. Regs. § 103-825(A)(4) provides that a Petition for Rehearing or Reconsideration shall set forth clearly and concisely: (a) The factual and legal issues forming the basis for the petition; (b) The alleged error or errors in the Commission order; (c) The statutory provision or other authority upon which the petition is based.

Despite the preference of South Carolina courts to review decisions of this Commission with deference on appeal, such decisions must be "supported by substantial evidence." *See Kiawah Prop. Owners Grp. v. The Pub. Serv. Comm'n of S.C.*, 357 S.C. 232, 237, 593 S.E.2d 148, 151 (2004). "Substantial evidence is not a mere scintilla; rather, it is evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion as the agency." *Friends of Earth v. Pub. Serv. Comm'n of S.C.*, 387 S.C. 360, 366 (2010).

The Commission is directed to approve a utility's IRP if it finds that "the proposed integrated resource plan represents the *most reasonable and prudent* means of meeting the electrical utility's energy and capacity needs as of the time the plan is reviewed." S.C. Code Ann. §58-37-40(C)(2) (emphasis added). To determine whether this standard was met, the

Commission is directed to consider, in its discretion, whether the IRP appropriately balances the following seven factors:

(a) Resource adequacy and capacity to serve anticipated peak electrical load, and applicable planning reserve margins;
(b) Consumer affordability and least cost;
(c) Compliance with applicable state and federal environmental regulations;
(d) Power supply reliability;
(e) Commodity price risks;
(f) Diversity of generation supply; and
(g) Other foreseeable conditions the Commission determines to be for the public interest.

The Commission must fully document its findings of fact and base its decision on reliable, probative, and substantial evidence on the whole record. *Kiawah Holdings*, at 237, 593 S.E.2d at 151. The Commission has a heightened duty to make "explicit findings of fact which allow meaningful appellate review of these complex issues." *Seabrook Island Property Owners Assn v. South Carolina Public Service Comm.*, 401 S.E.2d 672, at 674; 303 S.C. 493, at 497 (1991).

Decisions under Act 62 considering and approving or disallowing IRPs also must be supported by evidence of record. As noted by the Commission in its final Order rejecting the Dominion Energy South Carolina 2020 IRP, Order No. 2020-832, in approving an IRP under Act 62:

> The Commission's decision must be based on the facts in the record before it; this means that the IRP and the record must provide sufficient information about each of the seven balancing factors to enable the Commission to determine if the IRP appropriately balances each of them. Act 62 also requires that the plan must represent the *most* reasonable and prudent means of meeting the electrical utility's energy and capacity needs as of the time the plan is reviewed.

Id. at 8.

"The purpose of a petition for rehearing and/or reconsideration is to allow the Commission the discretion to rehear and/or reexamine the merits of issued orders pursuant to legal or factual questions raised about those orders by parties in interest, prior to a possible appeal." *In re: South Carolina Electric & Gas Company*, Order No. 2013-05 (Feb. 14, 2013). On appeal, Commission orders will be reversed or remanded if the decision of the Commission "is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record" or "arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." S.C. Code Ann. § 1-23-380(5)(e)-(f). A decision is arbitrary "if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards." *Deese v. S.C. State Bd. Of Dentistry*, 286 S.C. 182, 184-85 (1985).

B. Procedural Background

Duke filed its proposed IRPs in this docket on September 1, 2020. Those IRPs included six resource portfolios, lettered A-F, each based upon different assumptions and strategies for the development of Duke Energy's resources over the coming years. The six scenarios are listed below in Table 1.

Portfolio	Description
A – Base Case w/o Carbon	Baseline case with no carbon pricing
B – Base Case with Carbon	Same inputs as Port. A but optimized with modeled carbon pricing
C – Earliest Practicable Coal Retirement	Shifts coal retirements earlier than Base cases and backfills with alternative resources
D – 70% CO2 Reduction – Wind	Targets a 70% CO2 reduction by 2035 with additional wind
E – 70% CO2 Reduction – SMR	Targets a 70% CO2 reduction by 2035 with additional small modular nuclear reactors
F – No New Natural Gas	Targets a 70% CO2 reduction by 2035 with no new natural gas capacity

Table 1 - Duke Portfolios

After notice, ten parties intervened.[1] The Commission presided over an initial hearing from April 26 to May 5, 2021, during which time six witnesses presented direct testimony, nine witnesses provided rebuttal testimony and eleven witnesses offered surrebuttal concerning the merits and drawbacks of the various portfolios.

After the hearing, the Commission issued the Modification Order which found "several deficiencies in the 2020 IRPs proposed by Duke" and ordered Duke to undertake "a variety of changes to their modeling assumptions and methodologies" and to file Modified IRPs within sixty days.[2] The Commission also specifically directed Duke to "select a preferred resource portfolio in their Modified IRPs."[3] The Modification Order contained 23 ordering paragraphs, eight of which were explicitly directed to be applied to

[1] Intervenors included South Carolina Coastal Conservation League ("CCL"), Southern Alliance for Clean Energy ("SACE"), Sierra Club, Upstate Forever, and Natural Resources Defense Council ("NRDC") (collectively, "CCL et al."); the Carolinas Clean Energy Business Association ("CCEBA"); Johnson Development Associates, Inc. ("JDA"); Cherokee County Cogeneration Partners, LLC; Vote Solar; Nucor Steel, and the South Carolina Department of Consumer Affairs ("SCDCA")
[2] Modification Order at 1.
[3] *Id.* at 85.

the Modified IRP and two that were implicitly applicable to the Modified IRP based on other parts of the Modification Order.[4] A summary of those ten directives is provided in Table 2 below:

Ordering Paragraph	Directive for Application to Modified IRP
1	Develop additional load forecast scenarios
10	Natural gas forecast methodology changes
11	Include third-party PPAs at $38/MWh as selectable resource
12	Assume PPA contract term of at least 20 years
13	Include PPA pricing sensitivities at $36/MWh and $40/MWh
14	Account for 2020 federal investment tax credit extension
15	Use 100% single-axis tracking for future solar projects
16	Use NREL ATB Low / Advanced figures for battery storage costs
17	Assume 750 MW annual interconnection limit for solar and storage resources
19	Perform minimax regret analysis with updated assumptions

Table 2- Commission IRP Order Ordering Paragraphs

Importantly, in ordering changes to the natural gas forecasting and modeling approach, the Commission specifically found that the approach used in Duke's original IRPs was "flawed and result[ed] in generation mixes which do not represent the most reasonable and prudent means of meeting Duke's energy and capacity needs."[5]

[4] Modification Order Section VII. OPs 1, 10, 11, 13, 14, 16, 17, 19 specifically refer to the Modified IRP. OP 12 and 15 do not explicitly refer to the Modified IRP, but the text discussion supports their incorporation.
[5] Modification Order at 17.

Duke filed its Modified IRPs for DEC and DEP on August 27, 2021.[6] In its Modified IRPs, Duke reanalyzed the six portfolios, but rather than remodeling all of its portfolios with the assumptions and methodology updates required by the Modification Order, Duke bifurcated several portfolios, creating two variations of the portfolios A through C (e.g., A1 and A2) that differentiated between the original and modified portfolio results. The "1" portfolios retained Duke's original, rejected natural gas price forecast and battery cost assumptions, while the "2" portfolios utilized the Commission-directed updates for these values.

In addition, Duke introduced new restrictions to its modeled portfolios, such as a limit on the amount of third-party power purchase agreements ("PPAs") that the modeling software would be allowed to select.[7] It also interpreted Ordering Paragraph 6, related to modifications to its effective load carrying capability methodology, as applicable to future IRP plans and did not perform new capacity attribution calculations for solar or storage for its Modified IRP.

All remodeled portfolios incorporated other required changes such as the increase in annual interconnection capacity, the extension of the ITC, and the shift to 100% tracking systems for solar. In all, Duke produced nine modified portfolios in its Modified IRP: A1, B1, C1, D1, E1, and F1, and A2, B2, and C2. It did not produce a "2" version of the deep decarbonization portfolios D, E, and F.

In response to the Modification Order's requirement that it choose a portfolio, Duke selected C1, the Earliest Practicable Coal Retirement portfolio that utilized Duke's original

[6] Duke Energy Carolinas 2020 Modified Integrated Resource Plan ("DEC Modified IRP"), Duke Energy Progress 2020 Modified Integrated Resource Plan ("DEP Modified IRP").
[7] DEC Modified IRP at 27.

natural gas price forecast and battery cost assumptions – not the updated assumptions directed by the Commission's Modification Order (C2).[8]

Intervenors filed comments regarding the Modified IRPs on October 26, 2021. CCEBA, et al, specifically noted that "in the Modified 2020 IRPs Duke appears to have gone through the motions of complying with some, but not all, of the Commission's directives by including some, but not all, of the mandated changes in some, but not all, of its modeled portfolios."[9] Joint Intervenors provided over 20 pages of detailed critiques of Duke's Modified IRPs.

Also on October 26, 2021, the Office of Regulatory Staff ("ORS") filed a report under S.C. Code Ann. § 58-37-40(C)(3) ("ORS Report"). That report stated that the Modified IRP "sufficiently met the requirements" of the Modification Order, while nevertheless detailing multiple instances in which the Modified IRPs did not in fact meet those requirements.[10] Duke filed responsive comments on November 23, 2021, responding to the comments of the Intervenors and ORS.

On December 14, 2021, the Commission issued a Directive mandating that Duke "use Portfolio A2 as the selected base plan for their respective modified 2020 Integrated Resource Plan," followed by Order No. 2022-231 on May 5, 2022.

III. ARGUMENT

A. Order No. 2022-332 fails to provide any justification for the Commission's selection of Portfolio A2 and thus is arbitrary and capricious.

[8] DEC Modified IRP at 13.
[9] Comments of SCCL, SACE, Upstate Forever, NRDC, Sierra Club and CCEBA in Response to Modified 2020 IRPs ("Joint Comments") at 22.
[10] ORS Report at 5, 13, 17.

Order No. 2022-332 fails to satisfy the Commission's duty to provide sufficient justification of its decisions regarding the complex issues in Duke's IRPs. *See Seabrook Island Property Owners Assn v. South Carolina Public Service Comm.*, 401 S.E.2d 672, at 674; 303 S.C. 493, at 497 (1991). The Order here fails to make any findings which would support Portfolio A2 as the most reasonable and prudent portfolio. In the Order, the Commission made only the following findings of fact:

> (1) The Duke Companies' respective Modified 2020 IRPs were timely filed pursuant to S.C. Code Ann. Section 58-7-40.
>
> (2) The ORS review and Report was timely filed pursuant to S.C. Code Ann. Section 58-7-40.
>
> (3) The ORS Report identified three problem areas with the Modified 2020 IRPs where ORS recommends ongoing evaluation and examination.
>
> (4) Of the three problem areas for ongoing evaluation and examination identified by ORS two of them I) Revise the natural gas price blends in the gas price forecasting methodology and 2) Use NREL ATB Low figures for battery storage costs are objectionable because they are not included in the Duke Companies' elected Portfolio.
>
> (5) The Commission, by issuing its Directive which mandates the use of Portfolio A2, has made moot the two issues identified by ORS above.
>
> (6) ORS identified a potential deficiency with regard to the modeling of solar PPAs as a selectable resource and evaluations of price sensitivities. While the Duke Companies compellingly defend their modeling as being more appropriate given historical experience, the Commission Directive dated December 14, 2021, disposes of the issue prospectively.
>
> (7) The Directive specified that certain modeling scenarios should be evaluated and examined as part of the next IRP filing, whether an update or comprehensive plan: with pricing support per Order 2021-447, third-party solar PPAs

> as a selectable option for (a) fifty percent (50%) or half of the 750 MW renewable interconnection limit per year; and (b)one hundred percent (100%) of the 750 MW renewable interconnection limit per year.
>
> (8) The Directive further specified that, in addition to the points above, DEC and DEP shall comply with Order No. 2021-447 in further IRP filings.

The Order, however, provides *no* analysis or evidence supporting the Commission's selection of Portfolio A2. Instead, the Order briefly summarizes the critiques offered by Joint Intervenors as an assertion "that the Duke Companies failed to remodel all of the portfolios with the requirements set forth by the Commission."[11] The Commission then stated:

> The concerns raised by the intervening parties — ORS, SCCCL, SACE, Upstate Forever, NRDC, Sierra Club, CCEBA, and Vote Solar — are significant. However, many of the issues raised by the intervening parties concern the selection of the Duke Companies' C-1 Portfolio as the Duke Companies' preferred Plan. In the Commission Directive issued December 14, 2021, the Duke Companies were mandated to use Portfolio A2 as the selected base plan for the Modified 2020 IRPs. As a result, to the extent that the intervening parties asserted that Portfolio Cl is objectionable, those assertions have been addressed and disposed of by the Commission's rejection of Cl as the Preferred Plan.[12]

This statement grossly oversimplifies and misunderstands Joint Intervenors' critiques. Intervenors focused their comments on Duke's modeling of the C1 portfolio instead of the A portfolios simply because no party—including Duke—advocated for selection of the A portfolios, and because the substantial evidence of record in these

[11] Order No. 2022-232 at 6.
[12] *Id.* at 10.

dockets has revolved around the timing and particulars of expected near-term coal plant retirements, and later, with the compliance of Duke's Modified IRPs with Order No. 2021-447. Intervenors' concerns were not—as implied by the Commission—relevant only if the Commission approved a C portfolio.

For example, Joint Intervenors extensively documented a range of issues for Commission consideration related to full implementation of Order No. 2021-447 as applied to Portfolio's D, E, and F. Intervenors noted that Duke failed to model all portfolios using the Commission-ordered fuel price and other input assumptions, and that Duke further failed to perform mini-max regrets analysis on all portfolios. These concerns were relevant to all of Duke's portfolios and to enable selection of the least-cost, least-risk plan. The purpose of modeling all portfolios with reasonable gas and solar prices (and other input assumptions) is to produce a valid, apples-to-apples comparison of the portfolios. The purpose of Joint Intervenors' recommended mini-max regrets analysis was also aimed squarely at determining the statutorily-required "most prudent" plan. An apparent least-cost plan that has huge potential regrets (due to fuel price volatility or vulnerability to regulatory costs, for instance) cannot be "most prudent." Intervenors therefore urged compliance with the Commission's earlier order to perform an apples-to-apples mini-max regrets analysis on all portfolios. Intervenors sought, not merely to perfect portfolio C2, but to enable a comparison of all portfolios. Conclusively selecting Portfolio A2 without addressing the evidence in the record showing that price volatility could cause major regrets is imprudent, arbitrary, and not supported by the record.

In fact, the record shows that the "A" portfolio was the "Base without Carbon Policy" in both the original and modified IRPs and was not adjusted to address those risks

in the Modified IRPs. Portfolios A1 and A2 use the same "base planning assumptions" used in Portfolio A, with the difference being that A2 uses the alternate gas price forecasts and battery capital cost forecasts ordered by the Modification Order.[13]

Even more fundamentally, the Order provides *no* supporting evidence that its selected portfolio A2 is the *most reasonable and prudent* portfolio in light of all of the requirements of Act 62. In its Modification Order, the Commission recognized the importance of decarbonization as a goal under Act 62, and mandated changes to this and future IRPs which, if complied with, would move the Duke companies towards compliance with Act 62. The Order does not address or explain how the selection of portfolio A2 is consistent with these earlier-identified requirements of Act 62, or why portfolio A2 is the most reasonable and prudent in light of the evidence in the record.

In short, rather than resolve the material issues raised by parties in the case, the Commission's Order simply dismisses utility and intervenor testimony on the basis that it decided to choose a pathway unembraced by any party in the record. The Commission's failure to justify its decision based on evidence in the record renders the Order arbitrary and capricious.

B. The Order's adoption of portfolio A2 is not supported by substantial evidence in the record, and the Commission should instead adopt portfolio C2 as the most reasonable and prudent portfolio to meet Duke's energy and capacity needs at this time.

[13] *See* Modified DEC IRP at 47 ("Portfolio A1 was optimized in the same manner as Portfolio A from the September 2020 IRP. This portfolio uses the Company's base planning assumptions for fuel forecasts, load, EE, DSM, supply-side resources, and other operational inputs. There was no assumption on a price of carbon when developing this portfolio. This portfolio assumes that the optimization of resources is not influenced by a carbon constraint. The resources selected are based purely on delivering the portfolio that minimizes direct costs to customers while maintaining a reliable system meeting customers' demand and energy needs under these assumptions."); Modified DEC IRP at 48 ("Portfolio A2, was optimized in the same manner as Portfolio A1, with exception of the use of the alternate gas price forecast and battery capital cost projections.")

The Commission's selection of portfolio A2 is entirely contrary to the extensive evidentiary record in this proceeding related to the risk of continued reliance on Duke's coal assets to supply cost-effective and reliable energy to customers. The Commission has previously expounded on the "most reasonable and prudent" standard applicable to its approval of utility IRPs; in its final Order rejecting the Dominion Energy South Carolina 2020 IRP, the Commission stated:[14]

> As an initial matter, the plan must be "reasonable," meaning it is rational, logically consistent, and the result of sound judgment. In the context here, this requires consideration of whether the utility's plan meets the requirements of Act 62 and comports with industry norms and widely-known IRP best practices. The plan must also be "prudent," which implies that it gives due consideration to actual and foreseeable future conditions and risks. Such consideration should take into account the relative costs and benefits of avoiding potential future risks, such as regulatory, capital, or fuel risks. The Commission emphasizes that although cost is an important consideration, "reasonableness" and "prudence" do not require that the utility simply select the least-cost resource plan given the inherent uncertainty of sensitivity assumptions for future conditions. For example, if two plans have nearly the same expected cost, it may be more reasonable and prudent to select the more expensive of the two, if consideration of the other statutory factors (e.g. commodity price risk or diversity of generation) strongly favors that plan.[15]

In other words, the Commission has explicitly recognized that consideration of regulatory and commodity price risks is required to determine whether a plan is "prudent." Here, there is substantial evidence in the record of these proceedings demonstrating the regulatory, environmental, and supply risks associated with the continued operation of the Companies' coal plants.[16]

---

[14] Order No. 2020-832 at 7 ("As part of its review, the Commission also provides guidance on its interpretation and expectations for compliance with the statute for the public interest not only for DESC, but also for other electrical utilities.")

[15] *Id.* at 12-13.

[16] The Companies' petition for reconsideration filed on May 13, 2022, also explains the significant risk to ratepayers associated with portfolio A2.

For instance, CCEBA Witness Kevin Lucas analyzed the risks posed by likely additional regulation of carbon resources, stating in his direct testimony that "the risk of these new regulations is much higher in the Base cases where coal is assumed to operate longer than the deep decarbonization portfolios when coal plants are retired earlier. This likely understates the cost of owning and operating coal plants compared to the baseline included in Duke's IRPs."[17] He continued, noting that Duke's "unreasonable" input assumptions hampered his analysis, but that "a strong case can be made that the Earliest Practicable Coal Retirements case is the most robust of the non-deep decarbonization portfolios. This result is also supported by the asymmetric likelihood that regulatory costs will rise on coal plants before they fall, further increasing the risk associated with the continued operation of Duke's coal fleet."[18] Lucas further testified that the continued operation of coal plants, as anticipated in Portfolio A, A1 and A2 would leave Duke and South Carolina ratepayers exposed to this outside risk:

> Duke's failure to develop and analyze a high coal price scenario from either market conditions or regulatory changes is problematic. Coal generation faces outsized regulatory risk and market pressures in the near futures compared to the past. Changes in federal regulations may either require costly upgrades to maintain compliance or increase the running costs of coal units. For instance, EPA estimates that installing SCRs on units such as those a Marshall would cost roughly $100 million for a 300MW unit and roughly $200 million for a 700 MW units. This could in turn impact the economic timeline for coal unit retirements, which could require additional replacement capacity to come online earlier.[19]

[17] Direct Testimony of Kevin Lucas in Docket Nos. 2019-224-E and 2019-225-E at 30.
[18] *Id.* at 31.
[19] *Id.* at 98.

This testimony, which the Commission found credible and relied upon in the Modification Order, establishes the risk inherent in choosing one of the A Portfolios (Base Case Without Carbon). To select such a Portfolio and still comply with Act 62, the Commission would have to have based its decision on substantial evidence to the contrary which would show that Portfolio A2 is the *most* reasonable and prudent selection considering all of the requirements of Act 62. The Order fails to do so.

Duke and all Intervenors also recognized that the incorporation of renewable energy resources into the utilities' IRPs, as required by Act 62, was also justified economically and to reduce environmental and fuel price risks. *See* S.C. Code Ann. § 58-37-40(B)(1)(e) (requiring that renewable energy resources be fairly evaluated alongside other supply-side and demand-side resource options). For instance, Joint Intervenors' witness Rachel Wilson, in her surrebuttal testimony, highlighted the cost-effectiveness of replacing coal with renewables, stating that "renewable and battery storage resources are growing comparatively less expensive as their capital costs fall over time . . . there are no fuel costs, and [d]isplacement of energy from fossil-fueled generating sources with zero-variable cost resources results in savings to ratepayers from reduced operating costs."[20] Witness Lucas stated in his surrebuttal that "[t]he Synapse model shows that incorporating more renewable energy and battery storage can meet the reliability needs of Duke's system while delivering substantial savings over the planning period."[21]

Importantly, this Commission recognized in the Modification Order that "[g]iven the parties' *general agreement that the competitive procurement of renewable resources could result in savings to ratepayers* (even in the absence of a demonstrated capacity need),

[20] Surrebuttal Testimony of Rachel Wilson in Docket Nos. 2019-224-E and 2019-225-E at 18-19.
[21] Surrebuttal Testimony of Kevin Lucas in Docket Nos. 2019-224-E and 2019-225-E at 21.

it is *unreasonable* for the company not to consider that option in its resource planning. We note that the Base Without Carbon scenario (which the Company intends to use for most planning purposes) does not select any additional renewable resources other than those the Company is already either committed or obligated to procure under existing programs like CPRE and GSA."[22]

By reversing course and requiring the adoption of portfolio A2 the Commission fundamentally undermines the progress that its initial Modification Order spurred. While portfolio A2 does nominally apply some of the Commission's required modifications, it is a headlong retreat from the goals of Act 62, leaving coal capacity in place for longer than any party to this proceeding believes to be prudent. While Portfolio C1 remains problematic for many reasons, as detailed in the Joint Comments, it is notable for Duke's recognition that the "earliest practicable" retirement of South Carolina's coal plants is both environmentally desirable and economically necessary. In contrast, there is simply no evidence in the record supporting the idea that either A portfolio is reasonable and prudent, let alone *the most* reasonable and prudent portfolio under Act 62.

Joint Intervenors stand by their comments and critiques of the C portfolios, but recognizing the substantial changes expected in the Companies' upcoming 2023 IRPs, recommend that the Commission adopt portfolio C2 as the most reasonable and prudent plan for the Companies *at this time*. Given the remaining flaws embedded in Portfolio's D, E, and F, and outlined in Intervenors' Comments, Portfolio C2 represents the most viable remaining portfolio option. Though Duke advocates for C1, that portfolio does not implement key assumptions as required by Order No. 2021-447. Joint Intervenors maintain

[22] Modification Order at 69 (emphasis added).

that portfolio C2 more closely aligns with the requirements of Order No. 2021-447 and, in recognizing the benefit associated with the early retirement of Duke's risky and expensive coal fleet, is supported by substantial evidence in the record.[23]

IV. CONCLUSION

In light of the foregoing, Intervenors respectfully request that the Commission reconsider its selection of Duke's A2 portfolio and either select the C2 portfolio as the most reasonable and prudent portfolio to adopt at this time, given the substantial changes expected in Duke's forthcoming 2023 IRPs, or justify any selection of C1 in light of the modifications required by this Commission in Order No. 2021-447.

Respectfully submitted this 16th day of May 2022.

CAROLINAS CLEAN ENERGY BUSINESS ASSOCIATION

By: /s/ John D. Burns

John D. Burns
N.C. Bar No. 24152
General Counsel
811 Ninth Street
Suite 120-158
Durham, NC 27705
(919) 306-6906
counsel@carolinasceba.com

[23] Intervenor comments recommended that if there were a material reason Duke could not simply select C2 instead of C1 as its preferred portfolio, then the Company should explain why that is the case. Joint Comments at 16.

SOUTH CAROLINA COASTAL CONSERVATION LEAGUE, SOUTHERN ALLIANCE FOR CLEAN ENERGY, SIERRA CLUB, UPSTATE FOREVER, AND NATURAL RESOURCES DEFENSE COUNCIL

/s/ Kate Mixson
Kate Mixson
S.C. Bar No. 104478
Southern Environmental Law Center
525 East Bay Street, Suite 200
Charleston, SC 29403
kmixson@selcsc.org

CERTIFICATE OF SERVICE

I hereby certify that the parties listed below have been served via first class U.S. Mail or electronic mail with a copy of the *Petition for Reconsideration* of the Carolinas Clean Energy Business Association, Southern Alliance for Clean Energy, South Carolina Coastal Conservation League, Upstate Forever, Sierra Club, and Natural Resources Defense Council.

Alexander W. Knowles, Counsel
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, South Carolina 29201
aknowles@ors.sc.gov

Benjamin L. Snowden, Counsel
Fox Rothschild, LLP
434 Fayetteville St., Suite 2800
Raleigh, North Carolina 27601
bsnowden@foxrothschild.com

Andrew M. Bateman, Counsel
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, South Carolina 29201
abateman@ors.sc.gov

David Stark, Staff Counsel
Public Service Commission of SC
101 Executive Center Drive, Suite 100
Columbia, SC 29210
David.stark@psc.sc.gov

Carri Grube Lybarker, Counsel
S.C. Department of Consumer Affairs
Post Office Box 5757
Columbia, South Carolina 29250
clybarker@scconsumer.gov

Courtney E. Walsh, Counsel
Nelson Mullins Riley & Scarborough, LLP
Post Office Box 11070
Columbia, South Carolina 20211
Court.walsh@nelsonmullins.com

E. Brett Breitschwerdt, Counsel
McGuire Woods LLP
434 Fayetteville Street, Suite 2600
Raleigh, NC 27601
bbreitcshwerdt@mcguirewoods.com

F. David Butler, Special Counsel
Public Service Commission of SC
101 Executive Center Drive, Suite 100
Columbia, SC 29210
David.butler@psc.sc.gov

Frank R. Ellerbe, III, Counsel
Robinson Gray Stepp & Laffitte, LLC
Post Office Box 11449
Columbia, South Carolina 29211
fellerbe@robinsongray.com

Gudrun Elise Thompson, Counsel
Southern Environmental Law Center
601 W. Rosemary Street, Suite 220
Chapel Hill, North Carolina 27516
gthompson@selcnc.org

Heather Shirley Smith, Deputy General Counsel
Duke Energy Progress, LLC
40 West Broad Street, Suite 690
Greenville, South Carolina 29601
Heather.smith@duke-energy.com

James Goldin, Counsel
Nelson Mullins Riley & Scarborough, LLP
1320 Main Street 17th Floor
Columbia, South Carolina 29210
Jamey.goldin@jameygoldin.com

Alexander W. Knowles, Counsel
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, South Carolina 29201
aknowles@ors.sc.gov

John D. Burns, Counsel
Carolinas Clean Energy Business Association
811 Ninth Street, Suite 120-158
Durham, North Carolina 27705
counsel@carolinsceba.com

Michael K. Lavanga, Counsel
Stone Mattheis Xenopoulos & Brew, PC
1025 Thomas Jefferson Street, NW
Eighth Floor, West Tower
Washington, DC 20007
mkl@snxblaw.com

Weston Adams, III, Counsel
Nelson Mullins Riley & Scarborough, LLP
Post Office Box 11070
Columbia, South Carolina 29211
Weston.adams@nelsonmullins.com

John J. Pringle, Jr., Esq.
Adams and Reese LLP
5433 Wyoming Avenue
Charlotte, NC 28273
Jack.pringle@arlaw.com

Frank Ellerbe, III, Counsel
Robinson Gray Stepp & Lafitte, LLC
Post Office Box 11449
Columbia, South Carolina 29211
fellerbe@robinsongray.com

R. Taylor Speer, Counsel
Fox Rothschild LLP
2 West Washington Street, Suite 1100
Greenville, South Carolina 29601
tspeer@foxrothschild.com

Robert P. Mangum, Counsel
Turner, Padget, Graham & Laney, P.A.
Post Office Box 1495
Augusta, Georgia 30903
rmangum@turnerpadget.com

Robert L. Whitt, Counsel
Whitt Law Firm, LLC
Post Office Box 362
Irmo, South Carolina
richard@rlwhitt.law

Roger P. Hall, Deputy Consumer Advocate
S.C. Department of Consumer Affairs
Post Office Box 5757
Columbia, South Carolina 29250
rhall@scconsumer.gov

Robert R. Smith, II, Counsel
Moore & Van Allen, PLLC
100 North Tryon Street, Suite 4700
Charlotte, North Carolina 8202
robsmith@mvalaw.com

Samuel J. Wellborn, Counsel
Robinson Gray Stepp & Laffitte, LLC
Post Office Box 11449
Columbia, South Carolina 29211
swellborn@robinsongray.com

This 16th day of May 2022.

s/Kate Lee Mixson